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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,759	02/26/2002	Meryl J. Squires	2972-86588	4483

24628 7590 12/29/2004

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EXAMINER

JONES, DWAYNE C

ART UNIT	PAPER NUMBER
	1614

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/084,759	SQUIRES, MERYL J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dwayne C Jones	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 OCT 2004.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 31 and 35-37 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 31 and 35-37 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Status of Claims***

1. Claims 31, 35, 36, and 37 are pending.
2. Claims 31, 35, 36, and 37 are rejected.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 31, 35, 36, and 37 are have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. Claims 31 and 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is insufficient descriptive support for the phrase, "derivatives thereof". In addition, the instant specification does not describe what is meant by the phrase, "derivatives thereof". Structural identifying characteristics of the phrase, "derivatives thereof". There is no evidence that there is any per se

structure/function relationship for the phrase, "derivatives thereof". The instant specification does provide an adequate written description for the phrase, "derivatives thereof". Accordingly, these claims fail to comply with the written description requirement.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 31, 35, 36, and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following reasons support this rejection. First, both independent claims 31 and 35 list the phytochemical concentrate of PSI as the moiety 4-O-methylglucoronoarabinoxylan, Mr 35 kD, and these claims further list the phytochemical concentrate of PSI as the moiety acid rhamnoarabinogalactan, Mr 450. This duality for the phytochemical concentrate of PSI results in a lack of clarity for these claims. Second, independent claims 31 and 35 employ the terms PSI, cynarin, and chioric acid and then further use parenthetical phrases to define these common terms with the alleged chemical terms. Using the parenthetical phrases introduces confusion and vagueness to these claims. It is suggested that the parenthetical phrases be removed from these claims. Consequently, these anomalies render the claims vague and indefinite to the skilled artisan.

***Obviousness-type Double Patenting***

8. The rejection of claims 31, 35, 36, and 37 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-18 of U.S. Patent No. 6,355,684 has been withdrawn in view of the Terminal Disclaimer of October 5, 2004.

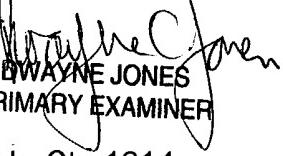
9. In addition, this notice serves as an advisory to applicants to completely furnish information regarding related applications and granted patents that would impact patentability of this instant application. Applicant's will not be permitted to extend the prosecution of the present application by reason of their inaction with regard to notice the Office of conflicting claims in copending applications, the discovery of which necessitated the new grounds of rejection at this advanced point in prosecution. This situation is clearly analogous to the policy of making an action final where applicant's material amendments to the claims necessitated new ground of rejection, since in both instances it is applicant who caused the rejection to be applied after the case had received an action on the merits, see MPEP 706.07(a). In the event that an application is found which was not provided and disclosed to the Office, the following Office Action may be made Final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (571) 272-0578. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, and Fridays from 8:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, may be reached at (571) 272-0951. The official fax No. for correspondence is (571)-273-8300.

Also, please note that U.S. patents and U.S. patent application publications are no longer supplied with Office actions. Accordingly, the cited U.S. patents and patent application publications are available for download via the Office's PAIR, see <http://pair-direct.uspto.gov>. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov)), from the Office of Public Records and from commercial sources.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications may be obtained from Private PAIR only. For more information about PAIR system, see <http://pair-direct.uspto.gov> Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 1-866-217-9197 (toll free).

  
DWAYNE JONES  
PRIMARY EXAMINER

Tech. Ctr. 1614  
December 24, 2004